

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Joao Albino de Souza Abreu

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Petitioner

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1:09cv789 (JCC/TRJ)

v.

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Thomas Decker, et al.

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Respondents

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MEMORANDUM OPINION

This matter is before the Court on the petition for Writ of Habeas Corpus. For the reasons set forth below the petition for writ of habeas corpus is denied on the grounds of lack of jurisdiction.

I.

Basic facts not in dispute:

The facts show the petitioner is in custody under an Order of Removal which was scheduled for July 18, 2009. On July 17, 2009, this Court issued an injunction allowing the petitioner to remain in the United States.

Petitioner is a Portugese national and entered the United States on September 6, 2000, as a visitor on a Visa Waiver Program. He was authorized to stay in the United States for 90 days. Petitioner admits overstaying.

Petitioner sought employment with a New York Corporation who sought approval to employ petitioner. The application was filed on April 16, 2001, and on January 10, 2002, filed with the Labor Department and approved by Immigration and Naturalization Service on May 16, 2002.

Petitioners application to adjust immigration status was received by Immigration and Naturalization Service on February 4, 2003.

Petitioner admitted he accepted employment without authorization. On May 1, 2009 the Application for Adjust was denied.

The application and petition were submitted with the assistance of a Notary Public who was convicted of Immigration Fraud. Consequently, the United States Citizenship and Immigration Service Bureau of Department of Homeland Security (USCIS) moved to revoke the visa petition and notified petitioner and New York Corporation. The New York Corporation did not respond the notice, purportedly because it did not receive the notice. USCIS then revoked the visa petition.

New York Corporation sought reopening of the revocation of the visa petition. That motion has not yet been decided.

On May 5, 2009, petitioner was arrested by the Prince William County Police and charges with the misdemeanor of driving while intoxicated. Thereafter it was determined that he had entered the United States under the Visa Waiver Program, and that he had violated the terms of his admission. On May 19, 2009, after having his rights read to him in Spanish, the petitioner withdrew his application to the United States.¹ On July 7, 2009, he was ordered removed from the United States.

The petitioner is currently in custody of Immigration and Customs Enforcement bureau (ICE) pending execution of an order of expedited removal.

¹ The petitioner is a Portugese National and claims that he waived under duress.

II.

The Court after reviewing the facts and the arguments of counsel concludes that under 8 U.S.C. § 1252 that the venue should be with the United States Court of Appeals for Fourth Circuit.

Accordingly the Petition for Writ of Habeas Corpus is Denied on grounds of lack of jurisdiction

July 21, 2009
Alexandria, VA

_____/s/
James C. Cacheris
United States District Judge